

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO. CR-05-1849 JH

6 DANA JARVIS,

7 Defendant.

TRANSCRIPT OF PROCEEDINGS  
January 19, 2006

10 BEFORE: THE HONORABLE JUDITH C. HERRERA  
United States District Judge

## A P P E A R A N C E S

For the Plaintiff:

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For the Defendant:

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2 THE COURT: Please be seated.

3 We're on the record in U.S.A. versus Jarvis,

4 CR-05-1849.

5 MR. BRAUN: Good morning again, Your Honor. James  
6 Braun and Steve Kotz on behalf of the United States.

7 THE COURT: Mr. Braun, Mr. Kotz.

8 MS. ROSENSTEIN: Judith Rosenstein on behalf of Mr.  
9 Jarvis. Also present at the table are Mr. Gorence and Mr.  
10 Kennedy.

11 THE COURT: All right. I think we're going to take  
12 up the motion for, motion to withdraw, Miss Rosenstein.

13 MS. ROSENSTEIN: Your Honor, the main reason that I'm  
14 making this request is the fact that I don't believe that my  
15 office is capable of handling complex cases at this time.  
16 When we had to renew our application for CJA work about a year  
17 or so ago I did not apply or request to be put on a complex  
18 case calendar; I was, nonetheless. The reason I didn't is  
19 because I do not have a staff. I don't have a secretary, I  
20 don't have a runner, I don't have any staff at all. And when  
21 I was assigned to this case I had no idea about how complex it  
22 really was. And, in fact, if I were to stay on this case I  
23 would pretty much have to give up all my other work. And I  
24 have, since leaving the Public Defender's Office I've been  
25 trying to cut back on the work as it is. But this case is

1 massive, Mr. Jarvis is the lead defendant in the case there  
2 are more allegations against him than anyone. There is a lot  
3 of forfeiture issues and so on and so forth. So I just  
4 believe that if I were forced to remain in the case that it's  
5 conceivable, from no fault of my own, but I'm concerned about  
6 how effective I could possibly be under the circumstances with  
7 no staff. Now, I know I've asked for, and the Court has now  
8 approved of, various additional assistance on the case,  
9 however, I still believe that my circumstances are such that I  
10 am not an effective counsel for Mr. Jarvis.

11 The other point I wanted to make was, I have spoken  
12 to several attorneys who are on the complex litigation list  
13 for CJA. Initially I thought Mr. Gorence would be able to,  
14 but I am disabused of that notion. However, both Billy  
15 Blackburn and Joe Romero have indicated to me that they would  
16 be willing to take such a case. They're both on the complex  
17 litigation calendar. The reason I did this is because I  
18 wanted to make sure that Mr. Jarvis had counsel that had  
19 staff, that had experience in doing this kind of thing, and  
20 both of these gentlemen are highly thought of and have done  
21 this type of work and believe that they could do it.

22 I also wanted the Court to be assured that they're --  
23 and of course the Court can appoint whomever the Court feels  
24 is appropriate if I am allowed to withdraw, but I wanted to be  
25 able to supply some names to the Court of people on the

1 complex litigation calendar who are willing to take it and are  
2 willing to take it immediately. That's pretty much -- and I  
3 believe that my client agrees that that this is not the, I'm  
4 not the appropriate counsel for him under all the  
5 circumstances.

6 THE COURT: I would note that I did receive a letter  
7 from Mr. Jarvis dated December 18, 2005 requesting other  
8 counsel.

9 MS. ROSENSTEIN: Okay. Thank you.

10 THE COURT: Mr. Braun, anything on behalf of the  
11 government?

12 MR. BRAUN: The government has no objection to Miss  
13 Rosenstein's request.

14 THE COURT: I will grant Miss Rosenstein's motion to  
15 withdraw and will refer the matter to the magistrate for  
16 appointment of other counsel.

17 Other issue in this case deals with defendant  
18 Jarvis's motion to release assets and for leave to retain  
19 counsel. And I've reviewed that motion. I've reviewed the  
20 government's motion to strike the motion. If you would like  
21 to comment on either of the motions I'll give you the  
22 opportunity to do so.

23 MR. GORENCE: Your Honor, to cure the government's  
24 motion to strike, Mr. Kennedy and I would file, and would file  
25 in open court, a limited entry of appearance and seek leave

1 for you to approve that to the extent that we can litigate the  
2 motion that's been filed. I've provided a copy to the  
3 government to cure the local rule, I would file it in open  
4 court, and at least allow Mr. Jarvis to have a meaningful  
5 Sixth Amendment right to retain counsel of his choice, which  
6 would then get into the merits of the motion we've filed with  
7 regard to a Jones hearing. And I can address that in some  
8 detail in terms of a suggestion that how this indictment is  
9 structured, but I see Mr. Braun is up and will defer to that,  
10 at least on the jurisdictional issue, do we have standing, Mr.  
11 Kennedy and I, to even argue this.

12 THE COURT: All right. Mr. Braun.

13 MR. BRAUN: Well, Your Honor, I don't think that Mr.  
14 Gorence's limited entry of appearance cures the first defect  
15 and resolves the government's motion to strike. First the  
16 Court needs to rule under Local Rule 44.1(g) on whether to  
17 allow this limited entry of appearance. If it does, the  
18 motion should still be stricken. The clerk's office should  
19 have never accepted it for filing. Mr. Gorence should have  
20 never filed it without first obtaining leave of the Court. He  
21 can then refile his motion if the Court grants his limited  
22 entry of appearance.

23 But on the issue of whether to grant that limited  
24 entry of appearance, I would note that in his letter to the  
25 Court Mr. Jarvis listed several attorneys that he would be

1 comfortable representing him, including Mr. Gorence and Jackie  
2 Robins, both of whom are on the CJA panel. And Mr. Gorence  
3 has indicated that he has the time to take this type of case,  
4 he's on the CJA panel, the Court can simply appoint him or the  
5 Court can simply appoint Jackie Robins, who Mr. Jarvis has  
6 also indicated he would be comfortable with, or the two  
7 lawyers that Miss Rosenstein mentioned, Billy Blackburn or Joe  
8 Romero, and that would solve this whole problem by just  
9 appointing those. So I don't think the Court needs to grant  
10 the limited entry of appearance, it can simply appoint an  
11 attorney on the CJA panel who is competent to handle this type  
12 of case.

13 MR. GORENCE: Your Honor, to answer that, and I think  
14 obviously the Sixth Amendment contemplates counsel of choice  
15 if an individual has the wherewithal to hire counsel. I,  
16 notwithstanding Miss Rosenstein's motion, I think there was a  
17 communication snafu, but I was not interested in this case as  
18 a CJA matter. I have informed the clerk's office that I'm on  
19 the panel but I don't do narcotics cases across the board on a  
20 CJA matter. In fact, the last one I had was with Mr. Braun  
21 and I have indicated that I would rather, actually in my mind,  
22 just do Native American cases and things of that nature. So  
23 I'm not interested as a CJA representation but, more  
24 fundamentally, Miss Rosenstein is absolutely correct in  
25 looking at the breadth of this indictment. The -- what's at

1 stake in this case for Mr. Jarvis, and it's not only my  
2 opinion but it's my colleague's Mr. Kennedy, that Mr. Jarvis  
3 needs the services of both of us to represent him on this  
4 continuing criminal enterprise indictment among other charges  
5 and with the serious ramifications, and we're of the belief  
6 that Mr. Jarvis has the financial wherewithal to hire us if  
7 the Court were to grant the motion to release assets that have  
8 been seized.

9                   The structure of the indictment, Your Honor, has,  
10 well, there's numerous property, both personal property and  
11 real estate, that has, the government has indicated it either  
12 seeks to forfeit as directly traceable or as substitute  
13 assets. I think preliminarily with regard, you can see from  
14 the indictment, the Mora County property that the government  
15 has filed les pendens on under the theory that if they are  
16 successful in obtaining the money judgment, those are  
17 substitute assets preliminarily, without even showing that  
18 they are traceable, those ought to be released and this Court  
19 ought to order the les pendens removed so that Mr. Jarvis can  
20 retain counsel of his choice. And it's not --

21                   THE COURT: Before we get to that issue let me just  
22 say that I did refer to the fact that I reviewed the letter  
23 submitted by the defendant and I did note, in reviewing that,  
24 there are are a number of lawyers that he indicated he would  
25 consider to be appropriate to defend this case. So what I'm

1 going to do is, I'm going to basically take it one step at a  
2 time. I'm going to, as I indicated, not only allow Miss  
3 Rosenstein's withdrawal, but he will be appointed other CJA  
4 counsel. What I'm going to do then is let his new counsel  
5 review this issue and we can take up the issue of releasing  
6 assets at a later time. So that's what I'm going to do.

7 MR. JARVIS: May I speak, please?

8 THE COURT: You may speak through Miss Rosenstein,  
9 she's representing you today but she will be withdrawing.

10 MS. ROSENSTEIN: Mr. Jarvis wants the Court to know  
11 that he is the defendant and he would very much like to be  
12 able to retain Mr. Gorence and Mr. Kennedy in this matter with  
13 his own personal funds, which will save the government a lot  
14 of money.

15 THE COURT: Well, what we're going to do is, we're  
16 going to get new counsel appointed and then that's an issue  
17 that you and your new counsel can take up. And we're going --  
18 and that's the way I'm going to proceed in this matter.

19 Anything else?

20 MR. BRAUN: Not for the government, Your Honor.

21 MS. ROSENSTEIN: Does the Court want me to submit an  
22 order on my motion?

23 THE COURT: I have a draft order.

24 MS. ROSENSTEIN: Oh, okay.

25 THE COURT: Let me show it to you. And it is a

1 draft, but if it meets with both of your approvals you can let  
2 me know and I'll enter it. So I'll let you review that.

3 MR. BRAUN: I guess, Your Honor, my only question  
4 would be whether the government's motion to strike was then  
5 granted and the resolution of the limited entry of  
6 appearance?

7 THE COURT: I'm sorry, Mr. Braun.

8 MR. BRAUN: Just for the record, whether the  
9 government's motion to strike Mr. Gorence's motion is granted  
10 and the resolution of the limited entry of appearance.

11 THE COURT: Well, I will grant the motion to strike,  
12 however, I recognize that I, as I've indicated, the motion can  
13 be revisited after new counsel is appointed. So I think it's  
14 up to -- so you all are free to submit another motion,  
15 obviously.

16 Anything else?

17 MR. BRAUN: Not for the government.

18 MS. ROSENSTEIN: No, Your Honor. Thank you.

19 THE COURT: All right, we'll be in recess.

20 (Court stood in recess.)

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REPORTER'S CERTIFICATE

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I, PAUL BACA, a court reporter for the United States, do hereby certify that I reported the foregoing case in stenographic shorthand and transcribed, or had the same transcribed under my supervision and direction, the foregoing matter and that the same is a true and correct record of the proceedings had at the time and place.

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I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case in any court.

WITNESS MY HAND this 8th day of December, 2006.

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Official Court Reporter

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OFFICIAL COURT REPORTER  
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